

AMENDED IN ASSEMBLY SEPTEMBER 2, 2003

AMENDED IN ASSEMBLY AUGUST 18, 2003

AMENDED IN ASSEMBLY JULY 21, 2003

AMENDED IN SENATE JUNE 2, 2003

AMENDED IN SENATE MAY 6, 2003

AMENDED IN SENATE MARCH 25, 2003

SENATE BILL

No. 922

Introduced by Senator Soto

February 21, 2003

An act to amend Section 13304 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 922, as amended, Soto. Cleanup or abatement orders: contaminated drinking water supplies.

Existing law, the Porter-Cologne Water Quality Control Act, requires a person who discharges waste into the waters of the state in violation of waste discharge requirements or other order or prohibition issued by a California regional water quality control board or the State Water Resources Control Board, upon the order of that regional board or the state board, to clean up the waste or to abate the effects of the waste. The act subjects a person who violates a cleanup or abatement order to civil penalties.

This bill would provide that a cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service to each affected public water supplier or private well owner. The bill would ~~authorize~~

require a regional board or the state board to request a water replacement plan from the discharger prior to the provision of the replacement water *in certain cases*. The bill would provide for mediation of replacement water claims.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13304 of the Water Code is amended to
2 read:
3 13304. (a) Any person who has discharged or discharges
4 waste into the waters of this state in violation of any waste
5 discharge requirement or other order or prohibition issued by a
6 regional board or the state board, or who has caused or permitted,
7 causes or permits, or threatens to cause or permit any waste to be
8 discharged or deposited where it is, or probably will be, discharged
9 into the waters of the state and creates, or threatens to create, a
10 condition of pollution or nuisance, shall upon order of the regional
11 board, clean up the waste or abate the effects of the waste, or, in
12 the case of threatened pollution or nuisance, take other necessary
13 remedial action, including, but not limited to, overseeing cleanup
14 and abatement efforts. A cleanup and abatement order issued by
15 the state board or a regional board may require the provision of,
16 or payment for, uninterrupted replacement water service, *which*
17 *may include wellhead treatment*, to each affected public water
18 supplier or private well owner. The replacement water shall meet
19 all applicable federal, state, and local ~~drinking water standards~~
20 ~~and, to the extent practicable, shall be comparable in quality to that~~
21 ~~provided, or that would have been provided, by the public water~~
22 ~~supplier or private well owner prior drinking water standards, and~~
23 *should have comparable quality to that pumped by the public*
24 *water system or private well owner prior to the discharge of waste.*
25 Upon failure of any person to comply with the cleanup or
26 abatement order, the Attorney General, at the request of the board,
27 shall petition the superior court for that county for the issuance of
28 an injunction requiring the person to comply with the order. In the
29 suit, the court shall have jurisdiction to grant a prohibitory or
30 mandatory injunction, either preliminary or permanent, as the
31 facts may warrant.

1 (b) (1) The regional board may expend available money to
2 perform any cleanup, abatement, or remedial work required under
3 the circumstances set forth in subdivision (a), including, but not
4 limited to, supervision of cleanup and abatement activities that, in
5 its judgment, is required by the magnitude of the endeavor or the
6 urgency for prompt action to prevent substantial pollution,
7 nuisance, or injury to any waters of the state. The action may be
8 taken in default of, or in addition to, remedial work by the waste
9 discharger or other persons, and regardless of whether injunctive
10 relief is being sought.

11 (2) The regional board may perform the work itself, or with the
12 cooperation of any other governmental agency, and may use rented
13 tools or equipment, either with operators furnished or unoperated.
14 Notwithstanding any other provisions of law, the regional board
15 may enter into oral contracts for the work, and the contracts,
16 whether written or oral, may include provisions for equipment
17 rental and in addition the furnishing of labor and materials
18 necessary to accomplish the work. The contracts are not subject to
19 approval by the Department of General Services.

20 (3) The regional board shall be permitted reasonable access to
21 the affected property as necessary to perform any cleanup,
22 abatement, or other remedial work. The access shall be obtained
23 with the consent of the owner or possessor of the property or, if the
24 consent is withheld, with a warrant duly issued pursuant to the
25 procedure described in Title 13 (commencing with Section
26 1822.50) of Part 3 of the Code of Civil Procedure. However, in the
27 event of an emergency affecting public health or safety, the
28 regional board may enter the property without consent or the
29 issuance of a warrant.

30 (4) The regional board may contract with a water agency to
31 perform, under the direction of the regional board, investigations
32 of existing or threatened groundwater pollution or nuisance. The
33 agency's cost of performing the contracted services shall be
34 reimbursed by the regional board from the first available funds
35 obtained from cost recovery actions for the specific site. The
36 authority of a regional board to contract with a water agency is
37 limited to a water agency that draws groundwater from the affected
38 aquifer, a metropolitan water district, or a local public agency
39 responsible for water supply or water quality in a groundwater
40 basin.

1 (c) (1) If the waste is cleaned up or the effects of the waste are
2 abated, or, in the case of threatened pollution or nuisance, other
3 necessary remedial action is taken by any governmental agency,
4 the person or persons who discharged the waste, discharges the
5 waste, or threatened to cause or permit the discharge of the waste
6 within the meaning of subdivision (a), are liable to that
7 governmental agency to the extent of the reasonable costs actually
8 incurred in cleaning up the waste, abating the effects of the waste,
9 supervising cleanup or abatement activities, or taking other
10 remedial action. The amount of the costs is recoverable in a civil
11 action by, and paid to, the governmental agency and the state board
12 to the extent of the latter's contribution to the cleanup costs from
13 the State Water Pollution Cleanup and Abatement Account or
14 other available funds.

15 (2) The amount of the costs constitutes a lien on the affected
16 property upon service of a copy of the notice of lien on the owner
17 and upon the recordation of a notice of lien, that identifies the
18 property on which the condition was abated, the amount of the lien,
19 and the owner of record of the property, in the office of the county
20 recorder of the county in which the property is located. Upon
21 recordation, the lien has the same force, effect, and priority as a
22 judgment lien, except that it attaches only to the property posted
23 and described in the notice of lien, and shall continue for 10 years
24 from the time of the recording of the notice, unless sooner released
25 or otherwise discharged. Not later than 45 days after receiving a
26 notice of lien, the owner may petition the court for an order
27 releasing the property from the lien or reducing the amount of the
28 lien. In this court action, the governmental agency that incurred the
29 cleanup costs shall establish that the costs were reasonable and
30 necessary. The lien may be foreclosed by an action brought by the
31 state board on behalf of the regional board for a money judgment.
32 Money recovered by a judgment in favor of the state board shall
33 be deposited in the State Water Pollution Cleanup and Abatement
34 Account.

35 (d) If, despite reasonable effort by the regional board to
36 identify the person responsible for the discharge of waste or the
37 condition of pollution or nuisance, the person is not identified at
38 the time cleanup, abatement, or remedial work is required to be
39 performed, the regional board is not required to issue an order
40 under this section.



1 (e) “Threaten,” for purposes of this section, means a condition
2 creating a substantial probability of harm, when the probability
3 and potential extent of harm make it reasonably necessary to take
4 immediate action to prevent, reduce, or mitigate damages to
5 persons, property, or natural resources.

6 (f) (1) Any public water supplier or private well owner
7 receiving replacement water by reason of an order issued pursuant
8 to subdivision (a), or any person or entity who is ordered to provide
9 replacement water pursuant to subdivision (a), may request
10 nonbinding mediation of all replacement water claims.

11 (2) If so requested, the public water suppliers receiving the
12 replacement water and the persons or entities ordered to provide
13 the replacement water, within 30 days of the ~~issuance of the~~
14 ~~cleanup and abatement order~~ *submittal of a water replacement*
15 *plan*, shall engage in *at least* one confidential settlement
16 discussion before a mutually acceptable mediator. ~~A private well~~
17 ~~owner may, but is not required to, participate in that discussion.~~

18 (3) Any agreement between parties regarding replacement
19 water claims resulting from participation in the nonbinding
20 mediation process shall be consistent with the requirements of any
21 cleanup and abatement order.

22 (4) A regional board or the state board is not required to
23 participate in any nonbinding mediation requested pursuant to
24 paragraph (1).

25 ~~(5) A cleanup and abatement order may not be stayed or held~~
26 ~~in abeyance during the course of the mediation. A mediator does~~
27 ~~not have authority to amend a cleanup and abatement order.~~

28 (5) *If a mutually acceptable mediator cannot be agreed upon,*
29 *a mediator shall be appointed by the Office of Environmental*
30 *Health Hazard Assessment from the list of independent private*
31 *arbitrators, pursuant to Section 25356.2 of the Health and Safety*
32 *Code.*

33 (6) *The party or parties requesting the mediation shall pay for*
34 *the costs of the mediation.*

35 (g) As part of any cleanup and abatement order that requires the
36 provision of replacement water, a regional board or the state board
37 ~~may~~ *shall* request a water replacement plan from the discharger
38 ~~prior to the provision of replacement water by the discharger. in~~
39 *cases where replacement water is to be provided for more than 30*

1 *days. The water replacement plan is subject to the approval of the*
2 *regional board.*

3 (h) A “water replacement plan” means a plan pursuant to
4 which the discharger will provide replacement water in
5 accordance with a cleanup and abatement order and is subject to
6 the approval of a regional board or the state board prior to its
7 implementation.

8 (i) This section does not impose any new liability for acts
9 occurring before January 1, 1981, if the acts were not in violation
10 of existing laws or regulations at the time they occurred.

11 (j) Nothing in this section limits the authority of any state
12 agency under any other law or regulation to enforce or administer
13 any cleanup or abatement activity.

14 (k) *The Legislature declares that the amendments made to*
15 *subdivisions (a) and (g) of this section by Senate Bill 922 of the*
16 *2003–04 Regular Session are a restatement of existing law.*

